

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
JUN 04 2015

CLERK

DAVID H. JOHNSTON,

CIV. 14-4182

Plaintiff,

vs.

ORDER

ROBERT DOOLEY, Warden,
Mike Durfee State Prison, Springfield, SD;
DENNIS KAEMINGK,
Secretary of Corrections
for the State of South Dakota; and
MARTY JACKLEY, Attorney General,
State of South Dakota,

Defendants.

Plaintiff David H. Johnston, an inmate at the Mike Durfee State Prison, has filed a civil rights lawsuit pursuant to 42 U.S.C. § 1983. The Magistrate Judge issued a Report and Recommendation recommending that the Plaintiff's Complaint be dismissed without prejudice for failure to state a claim upon which relief may be granted and for seeking monetary relief against a Defendant who is immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B) (ii) and (iii) and 1915A(b)(1) and (2). Plaintiff filed objections to the Report and Recommendation. After conducting an independent review of the record,

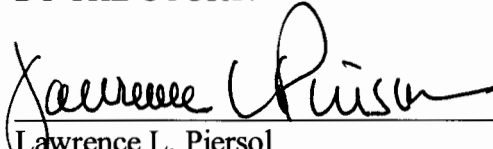
IT IS ORDERED:

1. That the Magistrate Judge's Report and Recommendation, Doc. 9, is ADOPTED and Plaintiff's Objections to the Report and Recommendation, Doc. 10, are DENIED.
2. That Plaintiff's Complaint, Doc. 1, is DISMISSED without prejudice for failure to state a claim upon which relief may be granted and for seeking monetary relief against a Defendant who is immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B) (ii) and (iii) and 1915A(b)(1) and (2).

3. That Plaintiff's Motion for Attorney Fees and Costs, Doc. 4, is DENIED as moot.
4. That Plaintiff is advised that the dismissal of this lawsuit will be considered a first "strike" for purposes of the Prison Litigation Reform Act. 28 U.S.C. § 1915(g).

Dated this 3rd day of June, 2015.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

By: 

Deputy